IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 29TH MARCH 2007 / 8TH MAGHA 1928

WP(C).No. 25160 of 2005(T)

PETITIONER:

SARADA, W/O.VASU AGED 79 YEARS,
KAVARATHU VEEDU,
NEDUVATHUSSERY,
CHAVARA SOUTH.P.O., KOLLAM.

BY ADV. SRI.THOMAS ABRAHAM

RESPONDENTS:
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1. STATE OF KERALA,
REP. BY ITS SECRETARY, HOME DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. DIRECTOR,
CENTRAL BUREAU OF INVESTIGATION,
C.G.O.COMPLEX, NEAR JAWAHARLAL NEHRU STADIUM,
LODHI ESTATE, NEW DELHI.

3. SUPERINTENDENT OF POLICE,
C.B.I. COCHIN BRANCH,
KATHRIKADAVU, COCHIN.

4. DIRECTOR GENERAL OF POLICE,
KERALA STATE, TRIVANDRUM.

5. DISTRICT SUPERINTENDENT OF POLICE,
KOLLAM.

6. CIRCLE INSPECTOR OF POLICE,
CHAVARA.

7. BAJI, S/O.SENATHIPAN,
MUTHUMANA VADAKKATHIL, NADUVATHUSSERY,
THEKKUMBHAGAM CHAVARA.

8. MADHU, S/O.MURALI,
PUTHUMANA VADAKKATHIL,
NADUVATHUSSERY, THEKKUMBHAGAM CHAVARA.

9. CHANDRA BABU,
ALIAS VAVAN, S/O.PASUPALAN,
SANTHALAYAM HOUSE, NADUVATHUSSERY,
THEKKUMBHAGAM CHAVARA.

10. VINODH, S/O.MURALI,
BINDU BHAVAN, NADUVATHUSSERY,
THEKKUMBHAGAM, CHAVARA.

11. VINESH S/O.MURALI,
BINDU BHAVAN, NADUVATHUSSERY,
THEKKUMBHAGAM, CHAVARA.

12. SASI, S/O.RAGHAVAN,
PLAMEZHATHU HOUSE,
NADUVATHUSSERY, THEKKUMBHAGAM,
CHAVARA.

13. VIJAYARAJAN, S/O. SASI,
PLAMEZHATHU HOUSE,
NADUVATHUSSERY, THEKKUMBHAGAM CHAVARA.

14. RAJESH,
AMBADYPUTHUVALIL, NADUVATHUSSERY,
THEKKUMBHAGAM, CHAVARA.

15. MADHU,
VARATTAZHIKATHU HOUSE,
NADUVATHUSSERY, THEKKUMBHAGAM,
CHAVARA.

16. SUSEELA, HEADMISTRESS,
SREE.GUHANANDAPURAM HIGH SCHOOL,
THEKKUMBHAGAM, CHAVARA SOUTH,
KOLLAM DISTRICT.

ADDL.R17 AND R18:

17. DIRECTOR GENERAL OF POLICE (CRIME BRANCH)
TRIVANDRUM.

18. DYSP, CBCID, KOLLAM.

ADDL.R17 AND R18 ARE IMPLEADED AS PER ORDER DATED 1.9.2005 IN I.A.13259/2005.

BY ADV. SRI.B.RAMAN PILLAI FOR R8
GOVT.PLEADER SRI.P.M.A.KALAM FOR R1, R3, R4, R5, R6 AND ADDL.RESPONDENTS.
ADV.SRI.JACOB SEBASTIAN.
SRI.C.P.SUDHAKARA PRASAD (SR) FOR R16, A.G.
SRI.S.SREEKUMAR, S.C. FOR CBI FOR R2 AND R3
ADV.P.VIJAYABHANU, AMICUS CURIAE
SRI.P.G.THAMPI, DGP

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 29/03/2007 ALONG WITH W.P.(C).34190 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C).25160/2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE JUDGMENT DATED 26.11.2003 IN W.P.(C). 34547/2003.

EXT.P2: COPY OF THE ORDER DATED 28.11.2002 OF THE DEO KOLLAM.

EXT.P3: COPY OF THE FIR IN CRIME NO.31/2004 OF THEKKUMBHAGAM POLICE STATION.

EXT.P4: COPY OF THE ADDITIIONAL REPORT DATED 27.2.2004.

EXT.P5: COPY OF THE ADDITIONAL REPORT DATED 9.3.2004.

EXT.P6: COPY OF THE ADDITIONAL REPORT DATED 22.3.2004.

EXT.P7: COPY OF THE ADDITIONAL REPORT DATED 31.3.2004.

EXT.P8: COPY OF THE ADDITIONAL REPORT DATED 1.10.2004.

EXT.P9: COPY OF THE CHARGE SHEET IN C.C.12/2005 ON THE FILE OF JUDICIAL 1ST CLASS MAGISTRATE'S COURT, SASTHAMCOTTA.

EXT.P10: COPY OF THE REPRESENTATION DATED 10.7.2005 SUBMITTED BY THE PETITIONER BEFORE RESPONDENTS 1 TO 3.

EXT.P11: COPY OF REPORTS PUBLISHED IN MANORAMA, MATHRUBHOOMI, KERALA KAUMUDI ETC.

EXT.P12: COPY OF THE STATEMENT GIVEN BY SRI.C.K.VIJAYAN PEON.

EXT.P13: COPY OF THE PETITION SUBMITTED BY PETITIONER'S SON SRI.SUDHAKARAN TO THE CONCERNED POLICE OFFICES REQUESTING TO CONDUCT A FAIR INVESTIGATION IN CRIME NO.161/2003 OF THEKKUMBHAGAM POLICE STATION.

EXT.P14: COPY OF THE JUDGMENT DATED 24.11.2003 IN W.P.(C). 34705/2003 FILED BY THE MANAGER OF THE SCHOOL.

EXT.P15: COPY OF THE STATEMENT DATED 12.11.2003 FILED BY THE PETITIONER'S DECEASED SON IN HIS CAPACITY AS A MANAGER IN THE SCHOOL BEFORE THE DEPUTY DIRECTOR OF EDUCATION, KOLLAM.

EXT.P16: COPY OF THE COUNTER AFFIDAVIT FILED BY THE 16TH RESPONDENT IN W.P.(C).60/2004.

W.P.(C).25160/2005

EXT.P17: COPY OF ORDER DATED 10.1.2007 IN W.P.(C).34190/2006.

/TRUE COPY/

J.B. KOSHY and T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C) Nos. 25160 of 2005 and 34190 of 2006

Dated this the 29th day of March, 2007

Judgment

Koshy, J.

These two writ petitions are filed by an unfortunate mother who lost her son. He was the Manager of a school. He was brutally murdered. It is the case of the petitioner that the investigation by the police is not done in the proper direction. According to her, names of the real accused were deleted. According to the police, names of some of the accused were deleted at the instance of the petitioner, but, the records would show that such allegations are not correct. In fact, petitioner was continuously pursuing her efforts to book the real culprits. However, either due to political influence or due to money influence, some senior officers are trying to protect the accused and in getting the papers signed by the old lady. Originally, the crime was investigated by the local police. Thereafter, the matter was entrusted with the Crime Branch and CBCID took up the

investigation on 26.10.2004 as per order dated D2-14597/CR/04. The Deputy Superintendent of Police, CBCID has gone through the papers and made the following report on 27.10.2004:

> "From the reports, it is seen that the cold-blooded murder was done as a result of heinous conspiracy and several persons are behind the conspiracy. It is submitted that nine accused originally arrayed were deleted by the local police and according to the Deputy Superintendent of Police, further investigation is necessary to find out whether they are behind the murder. According to him, some innocent persons are also made as accused to side track the case. It is also stated that local police officers including the Deputy Superintendent of Police went to the place to see the dead body, but, proper procedure in investigation was not done. Various infirmities were pointed out. It is further pointed out earlier some accused attacked the house of one Vamadevan and there is a chance that some accused might have been involved in this case also, but, their names were purposely avoided."

Therefore, the investigating officer came to the conclusion that this brutal murder was not investigated properly. The above report is of the year 2004. So far, no further serious investigation was done in the case. Now, we are in 2007. Petitioner apprehends that efforts are made to side track the case ignoring the plea of the old lady who lost her son.

We have also appointed Advocate Mr.P.Vijayabhanu as Amicus Curiae who usually appears in many criminal cases before this court. We have heard him in detail. The affidavit dated 1.2.2007 filed by the Deputy Superintendent of Police is not at all satisfactory. A reading of the contents of Annexure B1 produced along with the affidavit dated 1.2.2007, though stated to be signed in the presence of a Notary Public, appears that police got the same through some trick. In Annexure B1, it is written that petitioner denies the filing of W.P. (C) No.25160 of 2005, even though nothing is stated about W.P. (C) No.34190 of 2006. Consistent effort is made by the investigating officers to side track the matter. The thump impression is not put in the

front page of Annexure B1. It is not stated why she went to the office of the public prosecutor and now she was acquainted with the public prosecutor who is also a notary. Even if such a petition is filed, the Crime Branch was bound to investigate whether the deleted accused are parties in the criminal conspiracy culminated in the murder of the petitioner's son. We have gone through the entire case diary and we are not making any further comments as it may affect further investigation. The investigation has to be done by the investigating agency according to law with seriousness. Hence, we are not making any further comments about the investigation, but, only make the opinion that the investigation so far conducted by the local police and crime branch are not satisfactory, but appears that efforts are made to protect some real accused.

In the above circumstances, we are of the opinion that investigation should be conducted by an independent agency, CBI. We allow the writ petitions and direct the first respondent State to refer the matter to the CBI and direct the second respondent in W.P. (C) No.25160 of 2005 to take up the investigation according

to law as expeditiously as possible with utmost sincerity.

The writ petitions are disposed of with the above directions.

J.B.KOSHY
JUDGE

T.R.RAMACHANDRAN NAIR
JUDGE

vaa

J.B. KOSHY AND
T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C)Nos.25160/2005
and
32190/2006

Judgment

Dated:29th March, 2007